

Senate Bill No. 1045

CHAPTER 1165

An act to add Sections 11139.6, 11139.7, and 11139.8 to the Government Code, relating to public employment and contracting.

[Approved by Governor September 30, 2002. Filed
with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1045, Polanco. Public employment and contracting.

Existing provisions of the California Constitution prohibit discrimination or preferential treatment based on race, ethnicity, and gender in the operation of public employment, public education, and public contracting.

This bill would declare the intent of the Legislature to reaffirm diversity as a public policy goal in public employment and public contracting. The bill would authorize governmental agencies to engage in various general recruitment and outreach programs and focused outreach activities to increase diversity in public employment and public contracting. The bill would require each state department or agency awarding a contract or procuring goods or services, and would authorize each local agency receiving state funds, to collect information and report annually to the Governor and the Legislature on the participation level of minority, women, and disabled veteran-owned business enterprises in these contract and procurement activities.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares the following:

(a) Proposition 209, enacted by the voters on November 5, 1996, amended the California Constitution by adding Section 31 to Article I thereof to ban discrimination or preferential treatment based on race, ethnicity, and gender in the operation of public employment, public education, and public contracting.

(b) It is the intent of the Legislature to reaffirm diversity as a public policy goal in public contracting and public employment.

(c) California's ability to compete will suffer if talented, skilled business professionals and workers from any segment of the labor pool are excluded from employment or denied contracting opportunities because of discrimination or exclusion.

(d) In an August 1, 2000, report by the Governor's Task Force on Diversity and Outreach, the Task Force recommended the state's outreach efforts should ensure all sectors of California's workforce are informed of state employment openings.

(e) It is the intent of this act to emphasize and clarify that Section 31 of Article I does not prohibit governmental agencies from fashioning outreach programs in ways that will yield diverse results in public employment and public contracting.

(f) It is further the intent of the Legislature to clarify permissible outreach strategies to accomplish the diversity goal.

SEC. 2. Section 11139.6 is added to the Government Code, to read:

11139.6. (a) (1) The Legislature finds and declares that subdivision (a) of Section 31 of Article I of the California Constitution prohibits state and local government agencies from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, and public contracting. The Legislature finds that this prohibition does not prevent governmental agencies from engaging in inclusive public sector outreach and recruitment programs that, as a component of general recruitment, may include, but not be limited to, focused outreach and recruitment of minority groups and women if any group is underrepresented in entry level positions of a public sector employer.

(2) The Legislature also finds and declares that increasing the number of businesses that participate in the bidding process in public contracting results in more vigorous competition, and thus assists state and local agencies in obtaining the desired quality of work at a lower cost.

(3) It is the intent of this section that all governmental agencies shall engage in general recruitment and outreach programs to all individuals, including persons who are economically disadvantaged.

(b) For purposes of this section, underrepresentation shall be determined by comparing the minority group or the number of women at the governmental agency with that group's representation in the current civilian labor force in the jurisdiction of the governmental agency.

(c) State government employment shall use current state civilian labor force data to implement this section.

(d) It is the intent of this section to allow public sector employers to conduct outreach efforts with a goal of supplementing word-of-mouth recruitment that should result in increasing diversity of the public sector workforce.



(e) The type of recruitment activities allowed would include, but not be limited to, placement of job announcements in the following media instruments:

(1) General circulation newspapers, general circulation publications, and general market radio and television stations, including electronic media.

(2) Local and regional community newspapers.

(3) Newspapers, publications, and radio and television stations that provide information in languages other than English and whose primary audience is residents of minority and low-income communities.

(4) Publications, including electronic media, that are distributed to the general market and to newspapers, publications, and radio and television stations whose primary audience is comprised of minority groups or women.

(5) Recruitment booths at job fairs or conferences oriented to both the general market and the economically disadvantaged as well as those events drawing a significant participation by minorities or women.

SEC. 3. Section 11139.7 is added to the Government Code, to read:

11139.7. (a) The Governor's Task Force on Diversity and Outreach, in its August 1, 2000, report, concluded that data on minority business participation is not currently available, and that lack of useful data on minority business participation in state contracting is an overarching issue to be addressed.

(b) In contracting for and procuring goods, services, information technology, construction, architecture, and engineering consulting, and other consulting services, state and local departments and agencies are authorized to engage in focused outreach activities in addition to general outreach, for purposes of increasing participation by California's small business sector and increasing diversity in the state's contracting and procurement activities.

(c) Outreach activities may include, but are not limited to, the following:

(1) Invitations to bid distributed by state and local departments and agencies to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women, and disabled veteran-owned business and professional groups and associations, as appropriate.

(2) Publication of advertising concerning state and local contracting and procurement opportunities in trade papers and other publications focusing on small business enterprises, including publications and newspapers in languages other than English and those whose primary readership is minority, women, or disabled veteran-owned businesses.



(3) Outreach by small business advocates in each state or local government department or agency to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women, and disabled veteran-owned business and professional groups and associations, as appropriate.

SEC. 4. Section 11139.8 is added to the Government Code, to read:

11139.8. Notwithstanding any other provision of law, commencing January 1, 2003, each state department or agency awarding a contract or procuring goods or services shall, and each local agency receiving state funds may, collect information and report to the Governor and the Legislature on the level of participation by minority, women, and disabled veteran-owned business enterprises in contract and procurement activities as identified in this section. The reports shall be submitted annually, on or before July 1 of each year, and shall include dollar values of contract awards for the following categories of contractors:

- (a) Construction.
- (b) Architecture and engineering and other professional services.
- (c) Procurement of materials, supplies, and equipment.
- (d) Information technology procurements.

